



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

May 10, 2002

Number: **INFO 2002-0078**

Release Date: 6/28/02

UIL No.: 4261.00-00

[REDACTED]

[REDACTED]

Dear [REDACTED]:

I am responding to your letter of April 17, 2002, on behalf of helicopter tour companies in [REDACTED]. The tour companies believe scenic tours are not subject to the federal excise tax on the amount paid for taxable air transportation.

The Internal Revenue Code provides an exception from the tax on air transportation for certain small aircraft. However, the exception does not apply to aircraft operated on an established line. Under section 49.4263-5(c) of the Facilities and Services Excise Tax Regulations, "operated on an established line" refers to flights operated with some degree of regularity between definite points. This term does not necessarily mean that:

- Strict regularity of schedule is maintained.
- The full run is always made.
- A particular route is followed.
- Intermediate stops are restricted.

The term implies the person rendering the service has control over the direction, route, time, and number of passengers.

Court cases recognize the air transportation tax applies to scenic tours if certain conditions are met. *Lake Mead Air, Inc. v. United States*, 991 F. Supp. 1209 (D. Nev. 1997), found the tax applied because the "some degree of regularity" requirement had been satisfied for morning and afternoon circular air tours (and an air and land tour) of the Grand Canyon. The air tour company retained control over the direction, route, time, and number of passengers and regularly flew over a certain scenic area.

Lake Mead Air also found the requirement that the flights be operated between definite points was satisfied even though the flights were circular tours. The flights in question always started and ended at the same point, so the flights were between definite points. Therefore, the court concluded circular tours over the Grand Canyon were taxable transportation. In *Air Tour Acquisition Corp. v. United States*, 781 F. Supp. 669 (D. Haw. 1991), which was resolved on other grounds, the court noted a one-day excursion covering eight of the Hawaiian Islands was subject to the tax on air transportation.

The material you sent points out that Technical Advice Memorandum (TAM) 8623005 (Feb. 27, 1986) found certain circular flight tours were not operated between definite points as defined in the applicable regulations. However, as stated above, the position of the regulations is that the term "operated on an established line" means that flights be operated with some degree of regularity between definite points. In TAM 8623005 the tour operator's method of operation differed from that of most other operators. The tour operator advertised for business but provided no departure times and followed no set schedule. Thus, the tour was not operated with some degree of regularity.

Other, more recent TAMs have addressed factual situations closer to that presented in the material you forwarded to us and have concluded those tours are taxable transportation. See, TAM 9524003 (March 2, 1995) and TAM 9527008 (May 6, 1995). Please note a technical advice memorandum addresses the particular facts of the taxpayer therein. The Internal Revenue Code provides that a technical advice memorandum may not be used or cited as precedent.

I hope this information is helpful to you in responding to the helicopter tour companies. If you need additional information, please contact me or Mr. William D. Hussey, , at (202) 622-3130.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Richard A. Kocak
Chief, Branch 8